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Applicants:	Duane L. McDonald	Docket No.:	17,858.3
Serial No.:	10/749,988	T.C./A.U.:	3728
Confirmation No.:	9975	Examiner:	Bui, Luan Kim
Filed:	December 31, 2003	Date:	July 23, 2008
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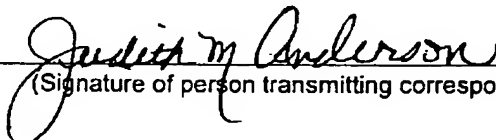
BRIEF ON APPEAL (27 pages)

28 total pages, including this page

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Appellant:	Duane L. McDonald	Docket No.:	17,858.3
Serial No.:	10/749,988	Group:	3728
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Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellant respectfully submits this Brief in support of his Appeal of Examiner Bui's **Final Rejection** of claims 1, 3-5, 7-14, and 16-26, which was mailed on February 26, 2008.

On May 23, 2008, Appellant, pursuant to 37 C.F.R. 41.31, mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on July 23, 2008.

Real Party in Interest

The present Application has been assigned to the Kimberly-Clark Worldwide, Inc.

Related Appeals and Interferences

There are no decisions on related appeals and/or interferences with regard to the present application.

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The following data lists the current and prior appeals related to the present application.

Appl. No./ Atty Docket No.	Examiner (Art Unit)	Current status	References cited in current rejections
10/366,872 17858	Ginger T. Chapman (3761)	RCE and Preliminary Amendment dated July 23, 2008. No decision on one previous appeal.	1,994,135 2,764,859 4,934,535 5,484,636
10/750,479 17858.1	Jacqueline F. Stephens (3761)	Brief on Appeal filed January 11, 2008. Examiner's Answer dated June 4, 2008.	6,318,555
10/750,505 17858.2	Sameh Tawfik (3721)	Notice of Appeal filed June 12, 2008. No decisions on two previous appeals.	JP 10-095,481
10/749,988 17858.3	Luan Kim Bui (3728)	This Brief on Appeal dated July 23, 2008. No decision on one previous appeal.	3,403,776 2,676,702 JP 10-095,481 6,640,976 3,286,435 4,896,768

Status of Claims

Claims 1 and 3-26 remain in the application with claims 1, 3-5, 7-14, and 16-26 being finally rejected and forming the subject of this Appeal. Claims 6 and 15 were previously withdrawn. Claim 2 was previously canceled.

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Status of Amendments

An Amendment After Final was filed on December 14, 2006 after the Final Office Action mailed on October 25, 2006. The Examiner responded with an Advisory Action mailed on December 29, 2006 entering the amendment after final and continuing the rejection of the claims on the bases stated in the final Office Action. On January 18, 2007, a Notice of Appeal was filed, followed by an Appeal Brief dated February 5, 2007. Prosecution was then reopened with an Office Action on March 23, 2007, a response on June 18, 2007, and a Final Office Action on September 7, 2007, after which no amendment was filed.

Summary of Claimed Subject Matter

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

Independent claim 1 is directed to a package 80 enclosing a single disposable absorbent article 20. See page 13, line 5 to page 22, line 11 and Figs. 11A-18B. The package 80 includes a first piece of material and a second piece of material. See, e.g., page 15, line 23 to page 16, line 3 and Figs. 14A-14B. The first piece of material and the second piece of material are operatively associated with one another to enclose the absorbent article 20, the operative association defining a seal 86, 94. See, e.g., page 15, line 23 to page 16, line 3 and Figs. 14A-14B. At least a portion of the first piece of material and at least a portion of the second piece of material extend beyond the seal 86, 94 to deliver an opening element. See, e.g., page 13, line 22 to page 14, line 3.

Dependent claim 8 is directed to the package 80 of claim 1, wherein the package 80 is vacuum packed. See page 9, line 11 to page 10, line 12 and page 14, line 26 to 34.

Dependent claim 9 is directed to the package 80 of claim 1, wherein the opening element is coded to indicate the size or type of the absorbent article 20. See page 16, lines 4-9.

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Dependent claim 10 is directed to the package 80 of claim 1, wherein the absorbent article 20 has a ratio in a folded configuration to an unfolded configuration of no more than 0.09. See page 20, line 26 to page 21, line 2.

Independent claim 11 is directed to a package 80 enclosing a single disposable absorbent article 20. See page 13, line 5 to page 22, line 11 and Figs. 11A-18B. The package 80 includes a layer of material having an interior surface and an exterior surface, the layer of material configured to provide an interior space and at least two lateral seals 86. See page 16, lines 10-24 and Fig. 15. The absorbent article 20 is situated within the interior space of the package 80, and a portion of the layer of material extends beyond at least one lateral seal 86 to provide an opening element 88. See page 16, line 10 to page 18, line 22 and Figs. 15-17C. The absorbent article 20 has a folded configuration and an unfolded configuration, and wherein the absorbent article 20 has a ratio of the folded configuration to the unfolded configuration of less than 0.14. See page 20, line 26 to page 21, line 2.

Dependent claim 16 is directed to the package 80 of claim 11, wherein the absorbent article 20 is vacuum packaged. See page 9, line 11 to page 10, line 12 and page 14, line 26 to 34.

Dependent claim 17 is directed to the package 80 of claim 11, wherein the opening element is coded to indicate the size or type of the absorbent article 20. See page 16, lines 4-9.

Dependent claim 18 is directed to the package 80 of claim 17, wherein the opening element is color coded to indicate the size or type of the absorbent article 20. See page 16, lines 4-9.

Dependent claim 19 is directed to the package 80 of claim 17, wherein the opening element is tactilely coded to indicate the size or type of the absorbent article 20. See page 16, lines 4-9.

Independent claim 21 is directed to a package 80 enclosing a single disposable absorbent article 20. See page 13, line 5 to page 22, line 11 and Figs. 11A-18B. The package includes a first piece of material and a second piece of material. See, e.g., page 15, line 23 to page 16, line 3 and Figs. 14A-14B. The first piece of material and the second piece of material are operatively associated with one another to enclose the absorbent article 20, the operative association defining a seal 86, 94. See, e.g., page 18, line 23 to page 20, line 6 and Fig. 18A. The seal defines at least one lateral edge 86 and at least one longitudinal edge 94. See page

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18 line 23 to page 19, line 3 and Fig. 18A. At least a portion of the first piece of material and at least a portion of the second piece of material extend beyond the seal to deliver an opening tab, wherein a portion of the opening tab extends beyond at least one lateral edge 86 of the seal, and a portion of the opening tab extends beyond at least one longitudinal edge 94 of the seal. See page 18 line 23 to page 19, line 3 and Fig. 18A.

Dependent claim 25 is directed to the package 80 of claim 22, wherein the package 80 is vacuum packed. See page 9, line 11 to page 10, line 12 and page 14, line 26 to 34.

Dependent claim 26 is directed to the package 80 of claim 22, wherein the absorbent article 20 has a ratio in the folded configuration to the unfolded configuration of no more than 0.09. See page 20, line 26 to page 21, line 2.

Grounds of Rejection to be Reviewed on Appeal

Ground 1

Claims 1, 3-5, 7-14, and 16-26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellant regards as the invention.

Ground 2

Claims 1, 3, 4, 7, and 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,403,776 to Denny (hereinafter "Denny").

Ground 3

Claim 21 stands rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 2,676,702 to Whitefoot, Jr. (hereinafter "Whitefoot").

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Ground 4

Claims 1, 3-5, 7, 10-14, 20-24 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Denny in view of Whitefoot.

Ground 5

Claims 8, 16 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 1, 11 and 22 above and further in view of Japanese Patent No. 10-95481 to Narawa (hereinafter "Narawa").

Ground 6

Claims 9, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 1 and 11 above, and further in view of 6,640,976 to Frank-Farah et al. (hereinafter "Frank-Farah").

Ground 7

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 17 above, and further in view of The Official Notice

Ground 8

Claims 1, 3, 4, 7, 10-14 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,286,435 to Weinberger (hereinafter "Weinberger") in view of Denny or U.S. Patent No. 4,896,768 to Anderson (hereinafter "Anderson").

Ground 9

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 1 above and further in view of Whitefoot.

Ground 10

Claims 8 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 1 and 11 above and further in view of Narawa.

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JUL 23 2008**Ground 11**

Claims 9, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 1 and 11 above and further in view of Frank-Farah.

Ground 12

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 17 above and further in view of The Official Notice.

Ground 13

Claims 21 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Weinberger in view of Whitefoot.

Ground 14

Claims 22-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 21 above , and further in view of Denny or Anderson.

Ground 15

Claims 25 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 21 above, and further in view of Narawa.

Argument**Ground 1 -- Rejection Of Claims 1 3-5, 7-14 and 16-26**

Claims 1, 3-5, 7-14, and 16-26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellant regards as the invention. Appellant respectfully submits that the Examiner's rejection is improper and should be reversed.

The Examiner states, and then answers, the rejection that "garment-type" in modifying "absorbent article" is vague. The Examiner states that "garment" is defined as an article of clothing. Adding this definition to "garment-type absorbent article" yields a meaning of an

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absorbent article that is of the type of an article of clothing. This meaning is clear, particularly in view of the specification of the present application.

Alternatively, "garment-type absorbent article" is widely used in the art, and has a clear meaning to one skilled in the art. In fact, a quick patent search yields thousands of U.S. patents and patent applications that employ the word "garment" in conjunction with disposable absorbent articles.

Therefore, for at least these reasons, the rejection of claims 1, 3-5, 7-14, and 16-26 is respectfully requested to be withdrawn.

Ground 2 -- Rejection Of Claims 1, 3, 4, 7, and 10

Claims 1, 3, 4, 7, and 10 stand rejected under 35 U.S.C. § 102(b), as being anticipated by Denny.

When asserting a Section 102 rejection, it is well established that there is no anticipation unless (1) all the same elements are (2) found in exactly the same situation and (3) are united in the same way to (4) perform the identical function. Appellant respectfully submits that the Examiner's rejection is improper and should be reversed.

Denny is directed to a sterile surgical package. Independent claim 1 of the present invention is directed to a package enclosing a single disposable garment-type absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities.

First, the Appellant asserts that Denny fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claim 1. Denny is directed to surgical articles and focuses primarily on a surgical sponge. Denny requires its package to be impervious to bacteria and pervious to sterilizing gases. Because these are not necessarily requirements for packaging a garment-type absorbent article, one would not look to Denny for a garment-type absorbent article packaging solution. In addition, the Appellant asserts that Denny fails to disclose, teach, or suggest a package including, *inter alia*, a first piece of

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material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claim 1. Denny does not disclose, teach, or suggest the rigidities, relative or otherwise, of its packaging materials. Denny's package is made from specialty paper and "a thin polypropylene film" on which the seals need to be offset such that the film doesn't tear (see col. 4, lines 53-61). Denny does not disclose the rigidity of either of these materials, or whether their rigidities are different.

Similarly, because Denny does not disclose rigidity, and even if one assumes *arguendo* that one material is more rigid than the other, Denny cannot anticipate both claim 3 and claim 4. We don't know which material is more rigid (assuming one is), and they can't both be more rigid than the other. For example, the Examiner argues that Denny's polypropylene film is the second material to reject claim 3, but then argues that the same polypropylene film is the first material to reject claim 4. The Examiner can't have it both ways. It is pure conjecture on the part of the Examiner that one of Denny's air pervious paper and polypropylene film is more rigid than the other, because Denny does not disclose this.

With respect to claim 7, Denny does not disclose, teach, or suggest at least a portion of the first piece of material and at least a portion of the second piece of material extending beyond the seal to deliver an opening element, wherein the portion of the first piece of material and the portion of the second piece of material are non-coterminous. The Office Action simply refers to Figure 4 of Denny and is silent with respect to how Denny might anticipate that the portion of the first piece of material and the portion of the second piece of material are non-coterminous.

With respect to claim 10, Denny does not disclose an absorbent article with the claimed folded configuration and thus does not anticipate claim 10.

Therefore, for at least these reasons, the rejection of claims 1, 3, 4, 7, and 10 is respectfully requested to be withdrawn.

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Ground 3 -- Rejection Of Claim 21

Claim 21 stands rejected under 35 U.S.C. § 102(b), as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Whitefoot.

Whitefoot is directed to a sanitary package. Independent claim 21 of the present application is directed to a package enclosing a single disposable garment-type absorbent article. First, the Appellants asserts that Whitefoot fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claim 21. Whitefoot is directed to surgical articles and focuses primarily on a surgical sponge. Whitefoot's package requires its package to be made from a porous material to allow for sterilization. Because this is not necessarily a requirement for packaging a garment-type absorbent article, one would not look to Whitefoot for a garment-type absorbent article packaging solution. In addition, the Examiner offers only conjecture and no evidence that a surgical sponge is equivalent to an article of clothing. The Appellant maintains that one skilled in the art would know that a sponge or a bandage is not an article of clothing, nor is it a garment-type absorbent article.

Accordingly, for at least these reasons, the Appellant respectfully submits that independent claim 21 is patentable over Whitefoot. Moreover, claims 22-26, which all eventually depend from claim 21, are also accordingly patentable over Whitefoot.

Therefore, for at least these reasons, the rejection of claims 21 is respectfully requested to be withdrawn.

Ground 4 -- Rejection Of Claims 1, 3-5; 7, 10-14, 20-24, and 26

Claims 1, 3-5, 7, 10-14, 20-24, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Denny in view of Whitefoot.

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With respect to claim 1, 3-5, 7, and 10, and as described above with respect to both Denny and Whitefoot, neither reference discloses, teaches, or suggests a garment-type absorbent article. In addition, Whitefoot does not correct any of the other deficiencies of Denny as described above in Ground 2.

With respect to claims 21-24 and 26, Denny does not correct the deficiencies of Whitefoot described above with respect to Ground 3.

With respect to claims 11-14 and 20, it is purely conjecture on the part of the Examiner that "the absorbent article of Denny is capable to be folded to provide a ratio in a folded configuration to an unfolded configuration of less than 0.14." Denny does not disclose, teach, or suggest this, nor does the Examiner point to where Denny might do so.

Therefore, for at least these reasons, the rejection of claims 1, 3-5, 7, 10-14, 20-24, and 26 is respectfully requested to be withdrawn.

Ground 5 -- Rejection Of Claims 8, 16, and 25

Claims 8, 16, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 1, 11, and 22 above and further in view of Japanese Patent No. 10-95481 to Narawa (hereinafter "Narawa").

As discussed above with respect to claims 1, 11, and 21, Denny fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claims 8, 16, and 25. Denny is directed to surgical articles and focuses primarily on a surgical sponge. Denny requires its package to be impervious to bacteria and pervious to sterilizing gases. Because these are not necessarily requirements for packaging a garment-type absorbent article, one would not look to Denny for a garment-type absorbent article packaging solution. In addition, the Appellant asserts that Denny fails to disclose, teach, or suggest a package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claim 8. Denny does not disclose, teach, or suggest the rigidities, relative or

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otherwise, of its packaging materials. Denny's package is made from specialty paper and "a thin polypropylene film" on which the seals need to be offset such that the film doesn't tear (see col. 4, lines 53-61). Denny does not disclose the rigidity of either of these materials, or whether their rigidities are different. Narawa does not correct these deficiencies. Narawa and Denny, alone or in combination, fail to disclose, teach, or suggest a package including, *inter alia*, enclosing a single disposable garment-type absorbent article, the package including a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities.

Further, the structure of Denny points to the flaw in combining Denny and Narawa. Denny requires its package to be gas pervious to enable sterilization. Combining Denny and Narawa leads to a package that cannot be vacuum packed because it is gas pervious, or a package that is not gas pervious and thus cannot be sterilized. Either way, the combination to Denny and Narawa produces a package that will not work for either, meaning one skilled in the art would not combine these references.

Therefore, for at least these reasons, the rejection of claims 8, 16, and 25 is respectfully requested to be withdrawn.

Ground 6 – Rejection Of Claims 9, 17, and 18

Claims 9, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 1 and 11 above, and further in view of Frank-Farah et al.

As discussed above with respect to claims 1 and 11, Denny fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claims 9, 17, and 18. Denny is directed to surgical articles and focuses primarily on a surgical sponge. Denny requires its package to be impervious to bacteria and pervious to sterilizing gases. Because these are not necessarily requirements for packaging a garment-type absorbent article, one would not look to Denny for a garment-type absorbent article packaging solution. In addition, the Appellant asserts that Denny fails to disclose, teach, or suggest a package including, *inter alia*, a first piece of material and a second piece of material, wherein

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the first piece of material and the second piece of material have different rigidities as required by claim 9. Denny does not disclose, teach, or suggest the rigidities, relative or otherwise, of its packaging materials. Denny's package is made from specialty paper and "a thin polypropylene film" on which the seals need to be offset such that the film doesn't tear (see col. 4, lines 53-61). Denny does not disclose the rigidity of either of these materials, or whether their rigidities are different. Franks-Farah does not correct these deficiencies. Franks-Farah and Denny, alone or in combination, fail to disclose, teach, or suggest a package including, *inter alia*, enclosing a single disposable garment-type absorbent article, the package including a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities.

Further, while Franks-Farah mentions matching color coding or icons between instructions and an item, neither Franks-Farah nor Denny disclose, teach, or suggest an opening element coded to indicate the size or type of an absorbent article.

Therefore, for at least these reasons, the rejection of claims 9, 17, and 18 is respectfully requested to be withdrawn.

Ground 7 -- Rejection Of Claim 19

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 17 above, and further in view of The Official Notice.

In addition to the deficiencies noted above in Denny and below in Weinberger and Anderson with respect to claims 1 and 11, the further addition of Franks-Farah would fail to correct these deficiencies. Further, while Franks-Farah mentions matching color coding or icons between instructions and an item, neither Franks-Farah nor any of the other references disclose, teach, or suggest an opening element coded to indicate the size or type of an absorbent article. Official Notice does not correct these deficiencies because there is no opening element coding in the prior art to add to Official Notice.

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Therefore, for at least these reasons, the rejection of claim 19 is respectfully requested to be withdrawn.

Ground 8 -- Rejection Of Claim 1, 3, 4, 7, 10-14, and 20

Claims 1, 3, 4, 7, 10-14, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Weinberger in view of Denny or Anderson.

With respect to claims 1 and 11, Weinberger fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claims 1 and 11. Weinberger is directed to a moist packaged article and a method of making the same. Weinberger requires its package to resist liquid leaks. Because this is not a requirement for packaging a garment-type absorbent article, one would not look to Weinberger for a garment-type absorbent article packaging solution. In addition, the Appellants asserts that Weinberger fails to disclose, teach, or suggest a package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claim 1. Weinberger does not disclose, teach, or suggest the rigidities, relative or otherwise, of its packaging materials. Denny does not correct these deficiencies, as discussed above. Anderson also does not correct these deficiencies; the two packaging materials in Anderson are identical: "First and second layers 12 and 16, each include a layer of aluminum foil and a layer of polyethylene." See col. 3, lines 5-6 and Fig. 7. Weinberger, Denny, and Anderson, alone or in combination, fail to disclose, teach, or suggest a package including, *inter alia*, enclosing a single disposable garment-type absorbent article, the package including a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities.

Further, Weinberger, Denny, and Anderson, alone or in combination, fail to disclose, teach, or suggest a disposable garment-type absorbent article having a folded configuration and an unfolded configuration, and wherein the absorbent article has a ratio of the folded configuration to the unfolded configuration of less than 0.14. Weinberger shows a single-layer moist wipe being folded, but does not teach or suggest folding something of the complex nature of a

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garment-type absorbent article. In an analogy presented only for illustration purposes, the ability to fold a piece of paper into quarters or eighths does not indicate that one has the ability to fold a dictionary (made from paper) into quarters or eighths. Folding a wipe cannot teach folding a complex garment-type absorbent article.

Therefore, for at least these reasons, the rejection of claims 1, 3, 4, 7, 10-14, and 20 is respectfully requested to be withdrawn.

Ground 9-- Rejection Of Claim 5

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 1 above and further in view of Whitefoot.

With respect to claim 1, Weinberger fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claim 5. Weinberger is directed to a moist packaged article and a method of making the same. Weinberger requires its package to resist liquid leaks. Because this is not a requirement for packaging a garment-type absorbent article, one would not look to Weinberger for a garment-type absorbent article packaging solution. In addition, the Appellant asserts that Weinberger fails to disclose, teach, or suggest a package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claim 5. Weinberger does not disclose, teach, or suggest the rigidities, relative or otherwise, of its packaging materials. Neither Denny, nor Anderson, nor Whitefoot correct these deficiencies, as discussed above. Weinberger, Denny, Anderson, and Whitefoot, alone or in combination, fail to disclose, teach, or suggest a package including, *inter alia*, enclosing a single disposable garment-type absorbent article, the package including a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities.

Therefore, for at least these reasons, the rejection of claim 5 is respectfully requested to be withdrawn.

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Ground 10-- Rejection Of Claims 8 and 16

Claims 8 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 1 and 11 above and further in view of Narawa.

In addition to the deficiencies noted above in Weinberger, Denny, and Anderson with respect to claims 1 and 11, it appears that the further addition of Narawa would not only fail to correct these deficiencies, but would also create additional problems. It is not clear why one skilled in the art would want to vacuum pack the moist wipe of Weinberger, as suggested by the Examiner. Drawing a vacuum on a moist wipe would cause the moisture to boil, which would release gas that would be drawn away by the vacuum pump so as not to increase the pressure in the package. Eventually, the moist wipe would no longer be moist, thus defeating its purpose.

Therefore, for at least these reasons, the rejection of claims 8 and 16 is respectfully requested to be withdrawn.

Ground 11 – Rejection Of Claims 9, 17, and 18

Claims 9, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 1 and 11 above and further in view of Frank-Farah.

In addition to the deficiencies noted above in Weinberger, Denny, and Anderson with respect to claims 1 and 11, the further addition of Franks-Farah would fail to correct these deficiencies. Further, while Franks-Farah mentions matching color coding or icons between instructions and an item, neither Franks-Farah nor Denny disclose, teach, or suggest an opening element coded to indicate the size or type of an absorbent article.

Therefore, for at least these reasons, the rejection of claims 9, 17, and 18 is respectfully requested to be withdrawn.

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Ground 12 -- Rejection Of Claim 19

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 17 above and further in view of The Official Notice.

In addition to the deficiencies noted above in Weinberger, Denny, and Anderson with respect to claims 1 and 11, the further addition of Franks-Farah would fail to correct these deficiencies. Further, while Franks-Farah mentions matching color coding or icons between instructions and an item, neither Franks-Farah nor any of the other references disclose, teach, or suggest an opening element coded to indicate the size or type of an absorbent article. Official Notice does not correct these deficiencies because there is no opening element coding in the prior art to add to Official Notice.

Therefore, for at least these reasons, the rejection of claim 19 is respectfully requested to be withdrawn.

Ground 13 -- Rejection Of Claims 21 and 26

Claims 21 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Weinberger in view of Whitefoot.

With respect to claim 21, Weinberger fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claim 21. Weinberger is directed to a moist packaged article and a method of making the same. Weinberger requires its package to resist liquid leaks. Because this is not a requirement for packaging a garment-type absorbent article, one would not look to Weinberger for a garment-type absorbent article packaging solution. Whitefoot does not correct this deficiency, as described in more detail above.

Further, Weinberger and Whitefoot, alone or in combination, fail to disclose, teach, or suggest a disposable garment-type absorbent article having a folded configuration and an unfolded configuration, and wherein the absorbent article has a ratio of the folded configuration to the

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unfolded configuration of less than 0.14. Weinberger shows a single-layer moist wipe being folded, but does not teach or suggest folding something of the complex nature of a garment-type absorbent article. In an analogy presented only for illustration purposes, the ability to fold a piece of paper into quarters or eighths does not indicate that one has the ability to fold a dictionary (made from paper) into quarters or eighths. Folding a wipe cannot teach folding a complex garment-type absorbent article.

Therefore, for at least these reasons, the rejection of claims 21 and 26 is respectfully requested to be withdrawn.

Ground 14 – Rejection Of Claims 22-24

Claims 22-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 21 above, and further in view of Denny or Anderson.

With respect to claims 22-24, Weinberger fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claims 22-24. Weinberger is directed to a moist packaged article and a method of making the same. Weinberger requires its package to resist liquid leaks. Because this is not a requirement for packaging a garment-type absorbent article, one would not look to Weinberger for a garment-type absorbent article packaging solution. In addition, the Appellant asserts that Weinberger fails to disclose, teach, or suggest a package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claims 22-24. Weinberger does not disclose, teach, or suggest the rigidities, relative or otherwise, of its packaging materials. Denny does not correct these deficiencies, as discussed above. Anderson also does not correct these deficiencies; the two packaging materials in Anderson are identical: "First and second layers 12 and 16, each include a layer of aluminum foil and a layer of polyethylene." See col. 3, lines 5-6 and Fig. 7. Weinberger, Whitefoot, Denny, and Anderson, alone or in combination, fail to disclose, teach, or suggest a package including, *inter alia*, enclosing a single disposable garment-type absorbent article, the package including a first piece of material and a second piece of

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material, wherein the first piece of material and the second piece of material have different rigidities.

Therefore, for at least these reasons, the rejection of claims 22-24 is respectfully requested to be withdrawn.

Ground 15 – Rejection Of Claim 25

Claim 25 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 21 above, and further in view of Narawa.

In addition to the deficiencies noted above in Weinberger and Whitefoot with respect to claim 21, it appears that the further addition of Narawa would not only fail to correct these deficiencies, but would also create additional problems. It is not clear why one skilled in the art would want to vacuum pack the moist wipe of Weinberger, as suggested by the Examiner. Drawing a vacuum on a moist wipe would cause the moisture to boil, which would release gas that would be drawn away by the vacuum pump so as not to increase the pressure in the package. Eventually the moist wipe would no longer be moist, thus defeating its purpose.

Therefore, for at least these reasons, the rejection of claim 25 is respectfully requested to be withdrawn.

Conclusion

For the reasons stated above it is Appellant's position that the Examiner's rejection of claims has been shown to be untenable and should be **reversed** by the Board.

Please charge the \$510.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

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Claims Appendix

The claims on appeal are:

1. A package enclosing a single disposable garment-type absorbent article, the package comprising a first piece of material and a second piece of material, the first piece of material and the second piece of material being operatively associated with one another to enclose the absorbent article, the operative association defining a seal, wherein the first piece of material and the second piece of material have different rigidities, and wherein at least a portion of the first piece of material and at least a portion of the second piece of material extend beyond the seal to deliver an opening element.
3. The package of claim 1, wherein the first piece of material is more rigid than the second piece of material.
4. The package of claim 1, wherein the second piece of material is more rigid than the first piece of material.
5. The package of claim 1, wherein the seal defines at least one lateral edge and at least one longitudinal edge, wherein a portion of the opening element extends beyond at least one lateral edge of the seal, and a portion of the opening element extends beyond at least one longitudinal edge of the seal.

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7. The package of claim 1, wherein the portion of the first piece of material and the portion of the second piece of material are non-coterminous.
8. The package of claim 1, wherein the package is vacuum packed.
9. The package of claim 1, wherein the opening element is coded to indicate the size or type of the absorbent article.
10. The package of claim 1, wherein the absorbent article has a ratio in a folded configuration to an unfolded configuration of no more than 0.09.
11. A package enclosing a single disposable garment-type absorbent article, the package comprising a layer of material having an interior surface and an exterior surface, the layer of material configured to provide an interior space and at least two lateral seals, the absorbent article being situated within the interior space of the package, wherein a portion of the layer of material extends beyond at least one lateral seal to provide an opening element, wherein the absorbent article has a folded configuration and an unfolded configuration, and wherein the absorbent article has a ratio of the folded configuration to the unfolded configuration of less than 0.14.
12. The package of claim 11 further comprising a longitudinal seal.

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13. The package of claim 11 wherein a portion of the layer of material is operatively associated with another portion of the layer of material to provide the interior space.
14. The package of claim 11 wherein the opening element comprises an upper portion and a lower portion.
16. The package of claim 11, wherein the absorbent article is vacuum packaged.
17. The package of claim 11, wherein the opening element is coded to indicate the size or type of the absorbent article.
18. The package of claim 17, wherein the opening element is color coded to indicate the size or type of the absorbent article.
19. The package of claim 17, wherein the opening element is tactilely coded to indicate the size or type of the absorbent article.
20. The package of claim 14, wherein the upper portion of the opening element and the lower portion of the opening element have different rigidities.

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21. A package enclosing a single disposable garment-type absorbent article, the package comprising a first piece of material and a second piece of material, the first piece of material and the second piece of material being operatively associated with one another to enclose the absorbent article, the operative association defining a seal, wherein the seal defines at least one lateral edge and at least one longitudinal edge, wherein at least a portion of the first piece of material and at least a portion of the second piece of material extend beyond the seal to deliver an opening tab, wherein a portion of the opening tab extends beyond at least one lateral edge of the seal, and a portion of the opening tab extends beyond at least one longitudinal edge of the seal.

22. The package of claim 21, wherein the first piece of material and the second piece of material have different rigidities.

23. The package of claim 22, wherein the first piece of material is more rigid than the second piece of material.

24. The package of claim 22, wherein the second piece of material is more rigid than the first piece of material.

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25. The package of claim 22, wherein the package is vacuum packed.

26. The package of claim 22, wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.09.

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Evidence Appendix

None.

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Related Proceedings Appendix

None.